No. 80-1206

IN THE

Supreme Court of the United States

October Term, 1980

IN RE: VILMA GRCICH.

IN RE: ESTATE OF VILMA GRCICH, Deceased,

STEPHEN J. GRCICH, Administrator,
Petitioner,

vs.

PITTSBURGH NATIONAL BANK,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA.

REPLY BRIEF FOR PETITIONER

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Statement of Issues Involved

The following issues are presented herein.

1. The Supreme Court of Pennsylvania misapplied Federal Law in this case, and actually misstated facts in its Opinion.

2. The Party who applies for and obtains a Court Order cannot use that Court Order to shield responsibility for actions pursuant to that order if said actions are illegal and the Order violates Federal Law and Constitutional rights.

TABLE OF CONTENTS.

	Page
Statement of Issues Involved	i
Table of Authorities	ii
Statement of the Case	1
Argument	2
The Supreme Court of Pennsylvania misapplied Federal Law in this case, and actually misstated facts in its Opinion	2
The Party who applies for and obtains a Court Order cannot use that Court Order to shield responsibility for actions pursuant to that Order if said actions are illegal and the Order violates Federal Law and Constitutional rights.	4
Conclusion. For these reasons, the Petition for a Writ of Certiorari should be granted	6

TABLE OF AUTHORITIES.

CASE CITED.

Chojnacki Estate, 397 Pa. 596, 156 A 2d 812 (1959) cert. denied, 363 U.S. 826, 80 S. Ct. 1595, 4 L. Ed. 2d 1522 (1960)	3

UNITED STATES CONSTITUTION.

Fourteenth Amendment	2,5

UNITED STATES CODE.

38 U.S.C. §3101 (a)	3,4

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REPLY BRIEF FOR PETITIONER

Statement of the Case

Statement of the Case is set forth on page 6 of the Petition for Certiorari and is herein incorporated by reference. It is to be noted that the Petition for the appointment of a guardian for the Estate of Vilma Grcich was presented to the Court of Common Pleas of Washington County, Pennsylvania, In Equity, and the hearing on the Petition was before Weiner, J., however before the hearing on the Petition commenced, Carson, J. signed the Order appointing

Pittsburgh First National Bank & Trust Company as guardian. This occurred on August 22, 1955 and the Order was at NO. 5281 IN EQUITY and the order was not an Order of the Orphans' Court Division as stated in Respondent's Statement of the case.

ARGUMENT

The Supreme Court of Pennsylvania misapplied Federal Law in this case, and actually misstated facts in its Opinion.

The Federal questions were raised in the Supreme Court of Pennsylvania and the Opinion of Simmons, J. which was adopted when that Court divided on June 29, 1979 clearly stated that the *Ex parte* Orders violated the 14th Amendment of the United States Constitution. This was ignored in the decision by the Supreme Court of Pennsylvania on October 31, 1980. The issues of premature declaration of incompetency, the status of Pittsburgh National Bank as guardian, and the defenses available to the expenditure of funds also were mentioned in the opinion by Simmons, J.

If, as the attorney for the respondent states in his brief in opposition, the guardian was duly appointed, the various Court Orders were proper and the amount authorized to be retained as a balance for emergency or burial expenses were $1,000.00, there would be no reason for the Petition for Certiorari. The true facts supported by the record in this case are set forth in the Petition for Certiorari. The amount to be retained was $1,500.00; there was no proper finding of incompetency; the *Ex parte* Orders authorizing the expenditure of funds for the payment of past due debts violated the law; and the Pittsburgh Office of the Veterans Administration did not have the authority to acquiesce in these expenditures.

Chojnacki Estate, 397 Pa. 596, 156 A 2d 812 (1959) cert. denied, 363 U.S. 826, 80 S. Ct. 1595, 4 L. Ed. 2d 1522 (1960) is cited by both sides and does hold that the Veterans Administration has discretionary powers over funds in the hands of an incompetent veteran's guardian, but in that case the payment was for future care and maintenance and did not dissipate the entire estate.

Chojnacki further sets forth the authority of the Veterans Administration to make future payments for care and maintenance because the payment in that case was a gratuity. In the Opinion from which the Petitioner seeks certiorari, Mr. Justice Roberts implied the incompetent was a veteran and implied that she was receiving a gratuitous payment from the Veterans Administration. This is not correct, the incompetent was not a veteran and the Payment by the Veterans Administration was compensation paid to Vilma Grcich as the result of the battlefield death of her son on whom she was dependent. This was an earned benefit. Once the funds were paid by the Veterans Administration into the guardianship account, the funds belonged to a civilian and not a veteran or his representative and the jurisdiction of the Veterans Administration over the use of those funds ended. However, the provisions of 38 U.S.C. §3101 (a) remained as a protection for those funds. The duty rested with the guardian to protect the incompetent's estate under that section of the law.

The Party who applies for and obtains a Court Order cannot use that Court Order to shield responsibility for actions pursuant to that Order if said actions are illegal and the Order violates Federal Law and Constitutional rights.

Mr. Justice Roberts in his Opinion sets forth the proposition that there is no basis for liability on the part of a guardian when Court approval has been obtained for an expenditure. This proposition cannot whitewash a guardian, improperly appointed, who submits a Petition for Court Approval for an expenditure when that guardian had valid defenses to that expenditure. The Court has no right to issue an *Ex parte* Order for such a proposition and then use that Order to protect the illegal action of that guardian. Protection from this abuse is a basic protection afforded U.S. citizens by the Constitution of the United States and it is from the Supreme Court of the United States that Petitioner seeks this protection.

When this case was argued before the Supreme Court of Pennsylvania, the Veterans Administration, the Pennsylvania Bar Association and the Pennsylvania Banker's Association filed *amicus curiae* briefs in an effort to protect the respondent and all argued for the sanctity of the Court Orders, however, each of the briefs failed to state the true facts which are a matter of the record. The guardian, who was improperly appointed, petitioned the Court of Common Pleas of Washington County, Pennsylvania, for approval of expenditures for past due debts of the incompetent when the said guardian had available the defense of 38 U.S.C. §3101 (a) to oppose the payment of these past due debts; the acquiescence of the Veterans Administration was noted in the Petition; and the Court signed an *Ex parte* Order approving the expenditure.

This was done six (6) times. At no time was any notice given to the incompetent or other interested parties. There was the expenditure of $10,035.00 of funds, received from the Veterans Administration as compensation, for past due debts. From the effect and responsibility for this improper and illegal act the guardian seeks to use *Ex parte* Court Orders which are violative of Due Process.

Petitioner is not attempting to use improperly this Court to question the competency or integrity of the Pennsylvania Supreme Court or the Judiciary of the Court of Common Pleas of Washington County, Pennsylvania, however, it is petitioner's contention that the *Ex parte* Orders issued by the Court of Common Pleas of Washington County, Pennsylvania, as the result of Petitions for Expenditures by the Respondent, were improper, illegal and violative of Due Process as set forth in the Fourteenth Amendment to the Constitution of the United States. The invalidity of these six *Ex parte* Orders is supported by the record in this case. It is also a fact, but not in record of this case, that during the argument before the Pennsylvania Supreme Court that resulted in the decision of October 31, 1981, Judge Richard DiSalle, who issued the *Ex Parte* Order approving the expenditure of $7,600.00 from the funds of Vilma Grcich, was a law clerk for Justice Flaherty who did not participate in this case. The Petitioner leaves it to the Supreme Court of the United States whether this fact or the fact that other members of the Judiciary of the Court of Common Pleas of Washington County, Pennsylvania, serve on committees of the Supreme Court of Pennsylvania is of any consequence.

Conclusion

It is the duty of the Courts of the various States and of the United States to protect the rights of incompetants who cannot protect themselves. In the event that a State or Commonwealth through their Court of Last Resort fails to protect the rights of an Incompetent it is incumbent on the Federal Courts to afford that protection. In the instant case the constitution rights of Vilma Grcich were violated by the actions of the Court of Common Pleas of Washington County, Pennsylvania and the guardian of her estate, Pittsburgh National Bank, the Court of Common Pleas of Washington County, Pennsylvania, corrected the wrong done Vilma Grcich in the only way open to that Court by surcharging the guardian upon whose various petitions the Court had acted. The Supreme Court of Pennsylvania, first affirmed and then reversed the action of the Court of Common Pleas of Washington County, Pennsylvania. In the opinion reversing the Court of Common Pleas of Washington County, Pennsylvania, the Supreme Court of Pennsylvania misapplied Federal Law and actually misstated facts. Further in its Opinion the Supreme Court of Pennsylvania, used the various Court Orders of the Court of Common Pleas of Washington County, Pennsylvania, that violated the Federal Law and the Constitutional rights of Vilma Grcich, to protect the guardian from responsibility for its improper act, when the Court Orders were made on the Petition of the Respondent. For these reasons the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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